93-533

Supreme Court, U.S.
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No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

DR. FRANK J. CAMOSCIO,

Petitioner,

v.

JUSTICE SUPERIOR COURT.

Respondents.

ON WRIT OF CERTIORARI TO THE

SUPREME COURT OF MASSACHUSETTS

* * * *

PETITION FOR WRIT OF CERTIORARI

* * * *

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THE QUESTIONS PRESENTED FOR REVIEW:

I. Did the court err by not issuing an order barring Judge Donohue from acting on the case Commonwealth v. Camoscio since he is highly prejudice against the Petitioner who is being denied the right to be heard by an impartial adjudicator violating the Fourteenth Amendment of the United States Constitution ?

II. Did the Supreme Judicial Court of Massachusetts violate the Petitioner's right of redress and equal access to the court when the court dismissed the Petitioner's appeal from the single justice on a motion from the Respondent ?

III. Did the Court err by allowing Judge O'Connor to file a memo to all Justices recommending the allowance of the Motion to Dismiss without notifying the Petitioner allowing him to present favorable arguments violating equal access and Due Process.

PARTIES TO THE CASE

DR. FRANK J. CAMOSCIO,

Petitioner,

vs.

JUDGE JAMES P. DONOHUE,
ASSOCIATE JUSTICE OF THE
MASSACHUSETTS SUPERIOR COURT,

Respondent.

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OPINION BELOW

The Petitioner, Dr. Frank J. Camoscio filed a complaint before the Single Justice of the Supreme Judicial Court of Massachusetts on May 13, 1993. Judge Greaney denied this complaint without hearing any arguments or opposition from the Respondent.

This suit was filed to keep Superior Court Judge Donohue from hearing a case in which the Petitioner was a Defendant. The Petitioner had previously written a letter prior to the judge being assigned the case that he would be denied the right to a fair trial before a prejudiced judge. See Addendum A for Judge Greaney's Decision and Addendum B to see letter dated April 19, 1993 sent to Judge Donohue.

The Petitioner filed an appeal to the Full Bench of the Supreme Judicial

Court of Massachusetts. This appeal was decided on July 8, 1993.

See Addendum C.

The Petitioner filed a Motion for Reconsideration which was denied on July 12, 1993. See Addendum D.

JURISDICTION

The last judgment in the Supreme Judicial Court of Massachusetts was on July 12, 1993. The Jurisdiction of this Court is invoked under 28 U.S.C.A. § 1257 and Rule 13 of this Court.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment, Section 1 to the Constitution of the United States provides as follows:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws".

The Petitioner also cites M.G.L.

c. 221 § 48. See Appendix E.

STATEMENT OF THE CASE

This case originated because the Petitioner sought a supervisory court order barring Judge Donohue from acting on the case Commonwealth v. Frank J. Camoscio. The Petitioner appeared before Judge Donohue on May 10, 1993 on a motion to dismiss the case due to lack of jurisdiction.

When Judge Donohue refused to hear the motion before the court, he stated that the court would only act on pre-trial motions. This violated the Petitioner's Constitutional right to have equal access and due process in a court of law.

The Petitioner's argument that the court lacked jurisdiction is M.G.L. c. 263 § 4 which clearly states that the court of original jurisdiction is district court not superior court for

duplicate offenses in both courts. The Petitioner also made the court aware of Commonwealth v. Graham, 445 N.E. 2d 1043 in which the court dismissed the superior court charges and the case was tried in district court.

Judge Donohue denied the Petitioner the right to raise the issue of jurisdiction. The Petitioner informed Judge Donohue that he knew him and there was a question whether Judge Donohue could act impartially in this case. Judge Donohue became outraged and denied ever knowing the Petitioner. Judge Donohue held the Petitioner for contempt of court and appointed legal counsel without the Petitioner's permission. After several hours, the Petitioner was brought back before the court and Judge Donohue read aloud a letter received by him from the Petitioner. See Addendum B. This letter proves that

Judge Donohue knew the Petitioner and Judge Donohue tried to deceive the court by committing intrinsic fraud upon the court. His prejudice against the Petitioner was seen when the Judge chastised the Petitioner as being the worst criminal who had ever come before him. This statement violated due process because the Judge had already convicted the Petitioner without ever hearing the evidence of the case. The Petitioner wrote to the Judge because he had received information from an anonymous source that the case would be heard by Judge Donohue and he would railroad him. Judge Donohue was transferred from another county to hear the case.

The Supreme Judicial Court of Massachusetts has a court order stating that the clerk is not to accept any filings from the Petitioner unless a majority of justices vote to accept it. The

Petitioner went to the clerk's office and was instructed to file the petition to the single justice. Judge Greaney denied the petition.

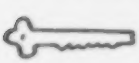
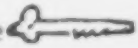
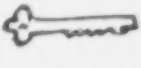
The Petitioner filed an appeal to the full bench. The full bench dismissed the case on a motion filed by the Attorney General on the grounds that the Petitioner had failed to get the permission of the majority of justices. The Petitioner filed a motion for reconsideration on the grounds that the court's decision had violated due process and equal access to the courts.

REASONS FOR GRANTING WRIT

A. JUDGE DONOHUE MUST BE BARRED FROM HEARING THE CASE BECAUSE OF HIS PREJUDICE AGAINST THE PETITIONER.

The Petitioner Frank J. Camoscio sent Judge Donohue a letter asking that he recuse himself from acting on this case. See letter and Addendum B. The letter stated that the Petitioner had learned that Judge Donohue would be assigned to hear the case and that Judge Donohue would railroad him because he was a dear friend of L. Scott Harshbarger. Judge Donohue was assigned to Worcester county at the time the letter was written.

On May 10, 1993, the Petitioner had his motion before the court to remand the case to Boston Municipal Court

due to lack of jurisdiction. This motion was transferred from the clerk magistrate to Judge Donohue to be heard. Judge Donohue refused the Petitioner the right to be heard on this motion. The Petitioner had every right to raise the issue and the court to act on it. The Petitioner cites the following cases: New York, New Haven & Hartford R. Co. v. Jenkins, 122 N.E. 2d 759. "4. Courts  39. It is duty of court to decide if it has jurisdiction when question appears on record even though point has not been raised by parties." and Nature Church v. Board of Assessors, Etc., Mass. 429 N.E. 2d 329. "5 Administrative Law and Procedure  303 Courts  39. Courts and other adjudicatory bodies have both the power and obligation to resolve problems of subject-matter jurisdiction whenever they become apparent, regardless of

whether the issue is raised by the parties."

The prejudice against the Petitioner from Judge Donohue became apparent when Judge Donohue read the Petitioner's letter into the record after denying ever knowing anything about the Petitioner. This letter proves that the Judge was being influenced by material not presented before him. The Petitioner cites the following case: Brian J. Fogarty v. Commonwealth, 406 Mass. 103 (1989). "7. Judges 49(1). To rise to level requiring disqualification of judge, alleged bias or prejudice must spring from extrajudicial source, and not from matters learned from participation in case."

The Judge made comments concerning the Petitioner stating that murderers and thieves have better character than the Petitioner. Judge Donohue's court

stenographer refuses to release the transcript of that hearing on May 10, 1993. Under Rules of Evidence, Rule 1004 the court must assume that Judge Donohue is withholding evidence that proves his prejudicial behavior against the Petitioner.

Judge Donohue wrongly incarcerated the Petitioner on May 10, 1993. Judge Donohue violated the Petitioner's right to represent himself under M.G.L. c. 221 § 48. Judge Donohue had the Commonwealth pay for this appointed attorney on the grounds that the Petitioner was indigent. The Petitioner has never claimed indigency with the court. Judge Donohue instructed his court officers to fill out a form which he knew to be false by stating that the Petitioner had claimed indigency. This violated M.G.L. c. 268 § 6A.

In 1992, the high court in Massachusetts decided in Parenteau v. Jacobson, 32 Mass. App. Ct. 97, that a Judge must pass

a two-part test in order to remain on a case. Judge Donohue must be able to state to this court that he is free from prejudice against the Petitioner which is the first part of the test. The second part of the test is whether a judge's impartiality might reasonably be questioned. See Haddad v. Gonzalez, 410 Mass. 855 (1991). The Petitioner states the letter of April 19, 1993 would reasonably question the Judge's impartiality as well as the Judge's statements made from the bench concerning the character of the Petitioner.

Finally, the Judge's refusal by his court personnel to release the transcript of the May 10, 1993 hearing and the Judge's false representation by his Court that counsel was appointed because of an indigency claim by the Petitioner removes any doubt that one would question the Judge's prejudice. The Peti-

tioner cites the following case: Haddad v. Gonzalez, 410 Mass. 855, 862. "S.J.C. Rule 3:09, Canon 3(C)(1), 382 Mass. 811 (1981). Under the rule "[c]ircumstances where a judge's impartiality might reasonably be questioned include instances where the judge 'has a personal bias or prejudice concerning a party ....' " Id., quoting from S.J.C. Rule 3:09, Canon 3(C)(1)(a)."

B. THE SUPREME JUDICIAL COURT OF MASSACHUSETTS ERRED BY DENYING THE PETITIONER REDRESS AND EQUAL ACCESS TO THE COURT.

The Petitioner acted in good faith by first going to the clerk's office of the full bench to obtain permission to file his petition. After waiting fifteen minutes, he was instructed to file the petition to the single justice. Judge Greaney heard the petition and denied it.

The Petitioner filed an appeal to the full bench. Respondent's counsel filed a motion to dismiss the appeal on the grounds that the majority of justices did not vote to accept this petition. The Petitioner had assumed that since he had gone to the clerk's office and was instructed to file with the single justice, permission had been granted. Since Judge Greaney had acted

on the petition, the Petitioner is entitled to redress through the appeals process. The Supreme Judicial Court of Massachusetts violated the First Amendment rights of redress by dismissing the case without acting on the appeal. Secondly, the Supreme Judicial Court denied the Petitioner equal access by having its clerk instruct the Petitioner to file before the single justice. Whenever the court has rejected the Petitioner's right to file a petition, it has always been placed in writing. Their action proves that the Petitioner was denied equal access.

C. THE COURT ERRED BY ALLOWING JUDGE O'CONNOR TO FILE A MEMO FAVORING DISMISSAL WITHOUT EVER NOTIFYING THE PETITIONER, ALLOWING HIM THE RIGHT TO BE HEARD AND PRESENT FAVORABLE ARGUMENTS VIOLATING THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION.

The Petitioner only learned of the existence and nature of the memo on September 10, 1993 when he obtained a copy of the Docket Sheet and a complete copy of Appendix C. The Supreme Judicial Court's Clerk, Ms. Jean Kenneth refused to make the memo available to the Petitioner. The case has been renumbered with an "M" in front of it to prevent the public from ever finding this case. The Court is

not proud of their skullduggery. See Appendix F for the copy of the Docket Sheet. The Constitution guarantees everyone Due Process which means that a person must be notified of Arguments before the Court and be allowed to present favorable arguments. Judge O'Connor acted as the Opposition rather than an Impartial Judge. Judge O'Connor knows that the Petitioner had his license to Practice Podiatry removed by decisions rendered by him not supported by the evidence before him. The Petitioner should have been allowed the right to view the memo and present opposing arguments. Any less than this is a violation of due process and is unconstitutional. The Court must set aside judgment and remand the case with special instructions.

CONCLUSION

The Petitioner has demonstrated that Judge Donohue has shown prejudice against him by chastising the Petitioner, by denying he knew the Petitioner, and by appointing counsel to represent the Petitioner when the Petitioner has wanted to represent himself and is entitled to do so under M.G.L. c. 221 § 48. Judge Donohue paid for this appointed counsel under false pretense that the Petitioner had claimed indigency. The Petitioner sought a court order barring Judge Donohue from hearing the case. Judge Donohue cannot hear the case because he cannot act impartially violating Fourteenth Amendment of the United States Constitution due process clause.

The Petitioner's equal access to the courts and redress was violated

when first he was instructed by the clerk of the Massachusetts Supreme Judicial Court to file before the single Justice and, then, the full bench refuses to hear the redress. This violated the First Amendment of the United States Constitution for redress and the Fourteenth Amendment for equal access to the courts.

The Petitioner also demonstrated that Judge O'Connor acted unconstitutionally by writing a memo in favor of dismissing the case presenting it to other Judges without allowing the Petitioner the right of favorable arguments or notifying him of its existence. The Court refuses to release a copy of it denying Camoscio redress and equal access to the Court in Washington. For these reasons the case must be remanded with special instructions.

I hereby certify that all of the above statements are true and are made under the pains and penalties of perjury.

Respectfully submitted,

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DATED: September 28, 1993

Richard F. LaMonica

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Notary Public
My Commission Expires Aug. 16, 1996